IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5041 OF 2005

Rashtriya Shikshan Sangh & anr. ..Petitioners.
Vs.
Popat N. Pawar & Ors. ..
Respondents.

WITH
WRIT PETITION NO.5042 OF 2005

Rashtriya Shikshan Sangh & anr. ..Petitioners.
Vs.
Surekha T. Swami & Ors. ..
Respondents.

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Mr. S.S. Pakale for the Petitioners.
Mr. Machhindra Patil for Respondent No.1.
Mr. C.R. Sonawane, Assistant Government Pleader for Respondent Nos. 2 to 5.
Mr. G. M. Savagave for Respondent No.6.

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CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.
8th March, 2006**.**

P.C. :

1. The management of an ashram school has called into question in these proceedings the validity of orders passed by the Divisional Social Welfare Officer setting aside the termination of the services of the First Respondents to the two petitions and awarding reinstatement with back wages. The First Respondent in Writ Petition 5041 of 2005 was appointed as an Assistant Teacher with

effect from 9th June, 1997 and his appointment was approved by the Special District Social Welfare Officer, Sangli on 4th November, 1997. The First Respondent had not acquired the D. Ed. qualification which is the requisite qualification for appointment of a primary teacher. The First Respondent in Writ Petition 5042 of 2005 was appointed as an Assistant Teacher with effect from 9th June, 1997 and her appointment was also approved by the Special District Social Welfare Officer on 4th November, 1997. The First Respondent in the companion petition also had not acquired the required qualification of D.Ed. which is a qualification requisite for appointment of a primary teacher.

2. The State Government issued a Government Resolution on 10th October, 2000 providing for the completion of a postal D. Ed. Course by untrained teachers. In the reply which has been filed in these proceedings by the State Government, it has been stated that the First Respondents in both these petitions were required to complete the postal D. Ed. Course by April, 2002 in accordance with Government Resolutions dated 10th October, 2000 and 8th April, 2004. Moreover, it has been stated that by Government Resolution dated 8th April, 2004 the period for the completion of the

postal D. Ed. Course by untrained assistant teachers appointed in primary ashram schools was extended upto the year 2004-05 without modifying the other conditions and eligibility criteria. According to the reply, the postal D.Ed. Course was liable to be completed within three opportunities commencing from the year 2000-01. On the other hand, on behalf of the First Respondents it has been urged that it was the management which had failed to recommend the proposal of the two teachers on schedule and in terms of an order passed on 12th December, 2000 by a Division Bench of this Court in Sarojini Tapkire v. State of Maharashtra (Writ Petition 6157 of 2000), both the Petitioners should have been allowed a period of three years from the date of admission for the completion of the D. Ed. Course. In the case of the First Respondent in Writ Petition 5041 of 2005 it was urged that the proposal was submitted on 19th March, 2002 and was approved by the Department on 20th October, 2002. The first session of the first year course was completed in November and December 2002 while the second session was completed on 10th July, 2002. The teacher was however prevented from completing the D. Ed upon the management intimating to the department that the services of the teacher had been terminated.

3. On a perusal of the proceedings before the Divisional Social Welfare Officer, it would be apparent that the question as to whether the First Respondents in the two Petitions were duly qualified has not been considered. It may be noted that it is the submission of the teachers that though they were still to complete their D. Ed. Course, it was the conduct of the management which prevented them from doing so and that in any event they were entitled to a further period of time to complete their course of studies. On the other hand on behalf of the management, it is contended that the First Respondents being untrained teachers, the management was under no obligation to continue to employ them and their services were therefore validly terminated.

4. At the hearing of these two Petitions it has been agreed upon between counsel appearing for the management and counsel appearing for the teachers that the factual disputes that arise in the proceedings particularly in regard to the conduct of the management would merit a primary determination by the Divisional Social Welfare Officer. In the circumstances, on the request of the learned counsel, these Petitions are disposed of with

the following directions :

1) The impugned orders passed by the Divisional Social Welfare Officer are quashed and set aside;

2) The proceedings shall stand remitted back to the Divisional Social Welfare Officer for fresh consideration;

3) It would be open to the management to file a written statement before the Divisional Social Welfare Officer on or before 31st March, 2006;

4) All the parties shall appear before the Divisional Social Welfare Officer for directions on 3rd April, 2006 and the authority shall dispose of the appeals against termination after furnishing an opportunity of being heard to the parties by 31st May, 2006.

The Petitions shall accordingly stand disposed of. There shall be no order as to costs.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.